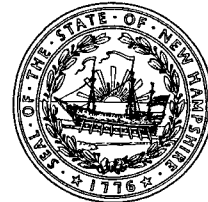




State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095
(603) 271-2147 FAX (603) 271-6588



Anthony and Cathy Poissant
95 Slab Bridge Road
Assonat, MA 02702

ADMINISTRATIVE ORDER
No. WD 05-018

Re: Wetlands File #2002-1385
28 Elm Street, Ossipee NH

June 27, 2005

A. INTRODUCTION

This Administrative Order is issued by the Department of Environmental Services, Water Division to Anthony and Cathy Poissant pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

B. PARTIES

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH.
2. Anthony and Cathy Poissant are individuals having a mailing address of 95 Slab Bridge Road, Assonat, MA 02702.

C. STATEMENTS OF FACTS AND LAW

1. Pursuant to RSA 482-A, the Department of Environmental Services regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without permit from [DES]."
3. Anthony and Cathy Poissant are the owners of land located on 28 Elm Street, Ossipee, more particularly described on Town of Ossipee Tax Map 55 as Lot 23 ("the Property"). The Property has approximately 270 feet of frontage on Duncan Lake.
4. On June 20, 2002, DES received a complaint alleging that large piles of sand had been placed on the lake frontage of the Property.
5. On July 19, 2002, DES received a Minimum Impact Expedited Application ("the Application") to retain the sand for beach replenishment and to install a retaining wall to keep the sand from washing away.

6. On August 15, 2002, DES issue a Notification of Incomplete Expedited Application ("the Notification") to Anthony and Cathy Poissant. The Notification requested additional information needed to evaluate the Application. The Notification included a request to respond the Notification within 120 days.

7. DES records indicate that no response was received within the requested time frame.

8. On January 2, 2003, DES sent a follow-up letter to Anthony and Cathy Poissant requesting an update of the status of the Application. The letter requested a response by January 17, 2003.

9. DES records indicate that no response to the January 2, 2003 letter has been received.

10. By letter dated July 17, 2003, the Ossipee Conservation Commission requested that Anthony and Cathy Poissant attend the August 2003 Conservation Commission meeting to update the Commission on the status of the Application.

11. The August 13, 2003 minutes of the Ossipee Conservation Commission state that Mr. Poissant "reported that nothing had been done with the pile of sand because he is waiting for the state's approval."

12. On February 16, 2005, DES personnel spoke with Cathy Poissant by telephone. Ms. Poissant stated the following:

- a. In 2002, the Poissants had two large piles of sand delivered to their property;
- b. The sand piles have not been spread;
- c. The reason they wanted the retaining wall was to prevent pre-existing sand from washing into Duncan Lake; and
- d. The sand was washing into Duncan Lake because of storm water runoff from Elm Street. The town road agent had visited the property in 2003 and Ms. Poissant was expecting the town to address the runoff, but to date, the town had not done so.

13. By letter dated February 17, 2005, DES informed Anthony and Cathy Poissant that if the information requested in the Notification was not received by March 1, 2005, a new application would be required to retain the sand.

14. DES records indicate that the requested information was not received.

15. On May 25, 2005, DES personnel conducted a field inspection of the Property and found:

- a. One pile of sand measuring approximately 18 feet x 18 feet was observed within the bank of Duncan Lake; and
- b. A second pile of sand measuring approximately 18 feet x 18 feet was observed landward of Duncan Lake and out of DES jurisdiction.

D. DETERMINATION OF VIOLATIONS

1. Anthony and Cathy Poissant have violated RSA 482-A:3, I by placing sand measuring approximately 18 feet x 18 feet within the bank of Duncan Lake without a permit from DES.

E. ORDER

Based on the above findings, DES hereby orders Anthony and Cathy Poissant as follows:

1. By July 15, 2005, permanently remove the sand pile located within the bank of Duncan Lake and relocate it landward to the top of bank.
2. By July 30, 2005, submit photographs and a letter documenting removal in accordance with Item E.1 above.
3. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Linda Magoon
DES Water Division
P.O. Box 95
Concord, NH 03302-0095
Fax: (603) 271-6588

F. APPEAL

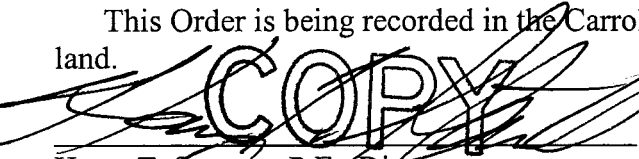
Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing if, in its opinion, good cause is demonstrated by the request. Any party not satisfied with the decision on reconsideration may appeal to the Wetlands Council. Please note that under RSA 482-A:10, II, the Council may not consider any ground that is not set forth in the request for reconsideration.


Filing an appeal or motion for reconsideration of the Order does not automatically relieve Anthony or Cathy Poissant of the obligation to comply with the Order.

G. OTHER PROVISIONS

Please note that RSA 482-A provides for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. DES will continue to monitor compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.


Harry T. Stewart, P.E., Director
Water Division


Michael P. Nolin, Commissioner
Department of Environmental Services

Certified Mail/RRR: 7004 0750 001 2491 9212

cc: Gretchen R. Hamel, Legal Unit Administrator ✓
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB
Ossipee Board of Selectmen
Ossipee Conservation Commission
Public Information Officer, DES PIP Office
Carroll County Registry of Deeds